

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 94

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECONCILING MULTIPLE AMENDMENTS TO SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED BY LAWS 2003, CHAPTER 51, SECTION 10 AND BY LAWS 2003, CHAPTER 90, SECTION 3 AND ALSO BY LAWS 2003, CHAPTER 164, SECTION 10); EXPANDING THE ELEMENTS OF AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING SANCTIONS FOR PROBATION VIOLATORS; CLARIFYING PROVISIONS REGARDING TREATMENT OF OFFENDERS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2003, Chapter 51, Section 10 and by Laws 2003, Chapter 90, Section 3 and also by Laws 2003, Chapter 164, Section 10) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
2 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
3 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

4 A. It is unlawful for a person who is under the
5 influence of intoxicating liquor to drive a vehicle within this
6 state.

7 B. It is unlawful for a person who is under the
8 influence of any drug to a degree that renders him incapable of
9 safely driving a vehicle to drive a vehicle within this state.

10 C. It is unlawful for:

11 (1) a person who has an alcohol concentration
12 of eight one hundredths or more in his blood or breath to drive
13 a vehicle within this state; or

14 (2) a person who has an alcohol concentration
15 of four one hundredths or more in his blood or breath to drive
16 a commercial motor vehicle within this state.

17 D. Aggravated driving while under the influence of
18 intoxicating liquor or drugs consists of a person who:

19 (1) has an alcohol concentration of sixteen
20 one hundredths or more in his blood or breath while driving a
21 vehicle within this state;

22 (2) has caused bodily injury to a human being
23 as a result of the unlawful operation of a motor vehicle while
24 driving under the influence of intoxicating liquor or drugs;

25 [⊕]

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1 (3) refused to submit to chemical testing, as
2 provided for in the Implied Consent Act, and in the judgment of
3 the court, based upon evidence of intoxication presented to the
4 court, was under the influence of intoxicating liquor or drugs;
5 or

6 (4) while under the influence of intoxicating
7 liquor or any drug to a degree that renders the person
8 incapable of safely driving a vehicle, drives a vehicle within
9 this state with one or more passengers who are less than
10 eighteen years of age.

11 E. A person under first conviction pursuant to this
12 section shall be punished, notwithstanding the provisions of
13 Section 31-18-13 NMSA 1978, by imprisonment for not more than
14 ninety days or by a fine of not more than five hundred dollars
15 (\$500), or both; provided that if the sentence is suspended in
16 whole or in part or deferred, the period of probation may
17 extend beyond ninety days but shall not exceed one year. Upon
18 a first conviction pursuant to this section, an offender may be
19 sentenced to not less than forty-eight hours of community
20 service or a fine of three hundred dollars (\$300). The
21 offender shall be ordered by the court to participate in and
22 complete a screening program described in Subsection [H] K of
23 this section and to attend a driver rehabilitation program for
24 alcohol or drugs, also known as a "DWI school", approved by the
25 bureau and also may be required to participate in other

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1 rehabilitative services as the court shall determine to be
2 necessary. In addition to those penalties, when an offender
3 commits aggravated driving while under the influence of
4 intoxicating liquor or drugs, the offender shall be sentenced
5 to not less than forty-eight consecutive hours in jail. If an
6 offender fails to complete, within a time specified by the
7 court, any community service, screening program, treatment
8 program or DWI school ordered by the court or fails to comply
9 with any other condition of probation, the offender shall be
10 sentenced to not less than an additional forty-eight
11 consecutive hours in jail. Notwithstanding any provision of
12 law to the contrary, if an offender's sentence was suspended or
13 deferred in whole or in part, and the offender violates any
14 condition of probation, the court may impose any sentence that
15 the court could have originally imposed and credit shall not be
16 given for time served by the offender on probation. Any jail
17 sentence imposed pursuant to this subsection for failure to
18 complete, within a time specified by the court, any community
19 service, screening program, treatment program or DWI school
20 ordered by the court or for aggravated driving while under the
21 influence of intoxicating liquor or drugs shall not be
22 suspended, deferred or taken under advisement. On a first
23 conviction pursuant to this section, any time spent in jail for
24 the offense prior to the conviction for that offense shall be
25 credited to any term of imprisonment fixed by the court. A

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1 deferred sentence pursuant to this subsection shall be
2 considered a first conviction for the purpose of determining
3 subsequent convictions.

4 F. A second or third conviction pursuant to this
5 section shall be punished, notwithstanding the provisions of
6 Section 31-18-13 NMSA 1978, by imprisonment for not more than
7 three hundred sixty-four days or by a fine of not more than one
8 thousand dollars (\$1,000), or both; provided that if the
9 sentence is suspended in whole or in part, the period of
10 probation may extend beyond one year but shall not exceed five
11 years. Notwithstanding any provision of law to the contrary
12 for suspension or deferment of execution of a sentence:

13 (1) upon a second conviction, an offender
14 shall be sentenced to a jail term of not less than [~~seventy-~~
15 ~~two~~] ninety-six consecutive hours, forty-eight hours of
16 community service and a fine of five hundred dollars (\$500).

17 In addition to those penalties, when an offender commits
18 aggravated driving while under the influence of intoxicating
19 liquor or drugs, the offender shall be sentenced to a jail term
20 of not less than ninety-six consecutive hours. If an offender
21 fails to complete, within a time specified by the court, any
22 community service, screening program or treatment program
23 ordered by the court, the offender shall be sentenced to not
24 less than an additional seven consecutive days in jail. A
25 penalty imposed pursuant to this paragraph shall not be

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1 suspended or deferred or taken under advisement; and

2 (2) upon a third conviction, an offender shall
3 be sentenced to a jail term of not less than thirty consecutive
4 days and a fine of seven hundred fifty dollars (\$750). In
5 addition to those penalties, when an offender commits
6 aggravated driving while under the influence of intoxicating
7 liquor or drugs, the offender shall be sentenced to a jail term
8 of not less than sixty consecutive days. If an offender fails
9 to complete, within a time specified by the court, any
10 screening program or treatment program ordered by the court,
11 the offender shall be sentenced to not less than an additional
12 sixty consecutive days in jail. A penalty imposed pursuant to
13 this paragraph shall not be suspended or deferred or taken
14 under advisement.

15 G. Upon a fourth [~~or subsequent~~] conviction
16 pursuant to this section, an offender is guilty of a fourth
17 degree felony [~~as provided in Section 31-18-15 NMSA 1978, and~~
18 ~~shall be sentenced to a jail term of not less than six months,~~
19 ~~which shall not be suspended or deferred or taken under~~
20 ~~advisement]~~ and, notwithstanding the provisions of Section
21 31-18-15 NMSA 1978, shall be sentenced to a term of
22 imprisonment of eighteen months, six months of which shall not
23 be suspended, deferred or taken under advisement.

24 H. Upon a fifth conviction pursuant to this
25 section, an offender is guilty of a fourth degree felony and,

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1 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
2 shall be sentenced to a term of imprisonment of two years, one
3 year of which shall not be suspended, deferred or taken under
4 advisement.

5 I. Upon a sixth conviction pursuant to this
6 section, an offender is guilty of a third degree felony and,
7 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
8 shall be sentenced to a term of imprisonment of thirty months,
9 eighteen months of which shall not be suspended, deferred or
10 taken under advisement.

11 J. Upon a seventh or subsequent conviction pursuant
12 to this section, an offender is guilty of a third degree felony
13 and, notwithstanding the provisions of Section 31-18-15 NMSA
14 1978, shall be sentenced to a term of imprisonment of three
15 years, two years of which shall not be suspended, deferred or
16 taken under advisement.

17 ~~[H.]~~ K. Upon any conviction pursuant to this
18 section, an offender shall be required to participate in and
19 complete, within a time specified by the court, an alcohol or
20 drug abuse screening program approved by the department of
21 finance and administration and, if necessary, a treatment
22 program approved by the court. The requirement imposed
23 pursuant to this subsection shall not be suspended, deferred or
24 taken under advisement.

25 L. Upon a second or third conviction pursuant to

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1 this section, an offender shall be required to participate in
2 and complete, within a time specified by the court:

3 (1) not less than a twenty-eight-day
4 inpatient, residential or in-custody substance abuse treatment
5 program approved by the court;

6 (2) not less than a ninety-day outpatient
7 treatment program approved by the court;

8 (3) a drug court program approved by the
9 court; or

10 (4) any other substance abuse treatment
11 program approved by the court.

12 The requirement imposed pursuant to this subsection shall
13 not be suspended, deferred or taken under advisement.

14 M. Upon a felony conviction pursuant to this
15 section, the corrections department shall provide substance
16 abuse counseling and treatment to the offender in its custody.

17 While the offender is on probation or parole under its
18 supervision, the corrections department shall also provide
19 substance abuse counseling and treatment to the offender or
20 shall require the offender to obtain substance abuse counseling
21 and treatment.

22 ~~[F.]~~ N. Upon a first conviction for aggravated
23 driving while under the influence of intoxicating liquor or
24 drugs pursuant to the provisions of Subsection D of this
25 section, as a condition of probation, an offender shall be

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1 required to have an ignition interlock device installed and
2 operating for a period of one year on all motor vehicles driven
3 by the offender, pursuant to rules adopted by the bureau.
4 Unless determined by the sentencing court to be indigent, the
5 offender shall pay all costs associated with having an ignition
6 interlock device installed on the appropriate motor vehicles.
7 If an offender drives a motor vehicle that does not have an
8 ignition interlock device installed on the motor vehicle, the
9 offender may be in violation of the terms and conditions of his
10 probation.

11 ~~[J.]~~ O. Upon a first conviction for driving while
12 under the influence of intoxicating liquor or drugs pursuant to
13 the provisions of Subsection A, B or C of this section, as a
14 condition of probation, an offender may be required to have an
15 ignition interlock device installed and operating for a period
16 of one year on all motor vehicles driven by the offender,
17 pursuant to rules adopted by the bureau. Unless determined by
18 the sentencing court to be indigent, the offender shall pay all
19 costs associated with having an ignition interlock device
20 installed on the appropriate motor vehicles. If an offender
21 drives a motor vehicle that does not have an ignition interlock
22 device installed on the motor vehicle, the offender may be in
23 violation of the terms and conditions of his probation.

24 ~~[K.]~~ P. Upon any subsequent conviction pursuant to
25 this section, as a condition of probation, a subsequent

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1 offender shall be required to have an ignition interlock device
2 installed and operating for a period of at least one year on
3 all motor vehicles driven by the subsequent offender, pursuant
4 to rules adopted by the bureau. Unless determined by the
5 sentencing court to be indigent, the subsequent offender shall
6 pay all costs associated with having an ignition interlock
7 device installed on the appropriate motor vehicles. If a
8 subsequent offender drives a motor vehicle that does not have
9 an ignition interlock device installed on the motor vehicle,
10 the subsequent offender may be in violation of the terms and
11 conditions of his probation.

12 ~~[E.]~~ Q. In the case of a first, second or third
13 offense under this section, the magistrate court has concurrent
14 jurisdiction with district courts to try the offender.

15 ~~[M.]~~ R. A conviction pursuant to a municipal or
16 county ordinance in New Mexico or a law of any other
17 jurisdiction, territory or possession of the United States or
18 of a tribe, ~~[where]~~ when that ordinance or law is equivalent to
19 New Mexico law for driving while under the influence of
20 intoxicating liquor or drugs, and prescribes penalties for
21 driving while under the influence of intoxicating liquor or
22 drugs, shall be deemed to be a conviction pursuant to this
23 section for purposes of determining whether a conviction is a
24 second or subsequent conviction.

25 ~~[N.]~~ S. In addition to any other fine or fee that
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1 may be imposed pursuant to the conviction or other disposition
2 of the offense under this section, the court may order the
3 offender to pay the costs of any court-ordered screening and
4 treatment programs.

5 ~~[0-]~~ T. As used in this section:

6 (1) "bodily injury" means an injury to a
7 person that is not likely to cause death or great bodily harm
8 to the person, but does cause painful temporary disfigurement
9 or temporary loss or impairment of the functions of any member
10 or organ of the person's body; ~~[and]~~

11 (2) "commercial motor vehicle" means a motor
12 vehicle or combination of motor vehicles used in commerce to
13 transport passengers or property if the motor vehicle:

14 (a) has a gross combination weight
15 rating of more than twenty-six thousand pounds inclusive of a
16 towed unit with a gross vehicle weight rating of more than ten
17 thousand pounds;

18 (b) has a gross vehicle weight rating of
19 more than twenty-six thousand pounds;

20 (c) is designed to transport sixteen or
21 more passengers, including the driver; or

22 (d) is of any size and is used in the
23 transportation of hazardous materials, which requires the motor
24 vehicle to be placarded under applicable law; and

25 ~~[+2]~~ (3) "conviction" means an adjudication

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1 of guilt and does not include imposition of a sentence."

2 Section 2. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

underscoring material = new
~~[bracketed material]~~ = delete